IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 524 of 2007

Judgement reserved on:

Date of decision: 10.10.2007.

Varyam Singh **…..Petitioner- Appellant.**

Vs.

Om Parkash & ors. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. Vikas Bhardwaj, Advocate.

For the Respondents : None.

Kuldip Singh, Judge (Oral).

This application is at the instance of complainant Varyam Singh seeking leave to file an appeal against the judgement of acquittal recorded by the learned Chief Judicial Magistrate, Kangra at Dharamshala on 28.4.2007, in Criminal Case No. 52-II/2004/01.

2. The brief facts are that on 8.11.2001 applicant Varyam Singh filed a complaint, under Section 500 IPC against the respondents and Captain Partap Chaudhary who died during the pendency of the proceedings, alleging therein that on 14.9.2000, respondents took out procession in Kangra town, raised slogans against him and burnt effigy of the applicant in front of the school

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Whether the reporters of the local papers may be allowed to see the Judgment?

of which he is the Principal, in presence of staff, students and public. This act of the respondents has tarnished the reputation of the applicant and an FIR was got registered to this effect. On 27.9.2000 the respondents No. 2, 3 and deceased Captain Partap Chaudhary accompanied with 20 to 25 persons forcibly entered the school of the applicant and started pushing the students and teachers out of their class rooms. The applicant tried to stop them, the respondents abused, manhandled him and pushed the applicant down from the stairs in front of the staff and students of the school. This was done to lower down the reputation of the applicant. An FIR was got registered to this effect on 27.9.2000. On 29.9.2000, respondent No.3 alongwith 10/12 women caught the applicant from collar and gave him beatings, dragged him down in front of teachers and students with the intention to lower down his reputation. A complaint to this effect was also submitted to Superintendent of Police, Kangra at Dharmshala.

3. The respondents made false allegations against the applicant of misappropriation of school funds, not maintenance of proper accounts, which allegations later on not found correct. There was no misappropriation of school funds, but respondents with the intention to defame the applicant got the news item published in Divya Himachal and The Tribune on 9.6.2000 and 26.6.2000, respectively that the applicant has misappropriated school funds. The news item was got published in the news papers by all the respondents by making false imputations against the applicant in order to lower down his reputation and defame him.

4. Notice of accusation, under Section 500/34 IPC was put to the respondents, who pleaded not guilty. Applicant examined ten witnesses. The statements of respondents were recorded, under Section 313 Cr.P.C. They pleaded their innocence. The respondents did not lead any evidence in defence. The learned Chief Judicial Magistrate, vide judgement, dated 28.4.2007 acquitted the respondents, hence this application for leave to file the appeal.

5. I have heard the learned counsel for the applicant-complainant and gone through the record. The applicant has lodged FIRs for the alleged occurrence, which took place on 14.9.2000 and 27.9.2000, but at the stage of filing the FIRs, the applicant had not claimed that he was defamed with the acts of the respondents. However, with respect to the alleged occurrences of 14.9.2000 and 27.9.2000, the FIRs have been registered and will be considered in accordance with law. The question in the present case is with respect to defamation alleged by the applicant. As per the allegations in the complaint, the applicant was defamed by the publication of news items in the news papers published in June 2000 and by alleged conduct of respondents in September 2000. The applicant filed the complaint on 8.11.2001. There is unexplained delay in filing the complaint. It is admitted case of the complainant that a case under Section 420 IPC was registered against him. A case under Sections 468, 471, 465 IPC has also been registered against the applicant. In other words, there are allegations of cheating and forgery against applicant. The news item against the applicant was published in the news papers, but the applicant has not raised grievance against the

news papers. The conduct of applicant is shrouded with suspicion because of registration of cases against him. There is nothing on record that the respondents have committed any act with the intention to harm the reputation of the applicant in the estimation of others. At the most the allegatiosn are bonafide in view of registration of cases against the applicant though it has not been established that such allegations were made by respondents.

6. CW 1 HHC Ashwani Kumar has proved FIR No. 320/2000, dated 14.9.2000. CW 2 is the complainant himself. CW 3 has placed on record audit reports Ex. CW 3/A to Ex. CW 3/D. CW 4 Arti Devi did not support the applicant. CW 5 Ashok Katoch is a formal witness. The applicant Varyam Singh again appeared as CW 6. CW 8 V.K.Bhardwaj, Advocate has proved notice Ex. CW 2/A. CW 9 Pawan Kumar Pathania has also not supported the complainant. The learned counsel for the applicant- complainant has drawn my attention to the statement of CW 10 Manoj Kumar, his statement is general and vague. CW 7 Shashi Devi has denied that anything happened in her presence. The learned Chief Judicial Magistrate has recorded a finding that CW 10 has some interest to depose in favour of the complainant. The learned trial court on the basis of the material on record has taken a possible view. No case has been made out for granting leave to file an appeal. Hence, leave to file an appeal is refused.

October 10, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**